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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,481	04/15/2004	Vincent Ling	WYS-00501	7025
58571	7590	07/01/2009		
FOLEY HOAG, LLP PATENT GROUP, (w/WYS) 155 SEAPORT BLVD. BOSTON, MA 02210-2600			EXAMINER OUSPENSKI, ILIA I	
			ART UNIT 1644	PAPER NUMBER
			MAIL DATE 07/01/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/824,481

Applicant(s)

LING ET AL.

Examiner

ILIA OUSPENSKI

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 10-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9 and 17-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date 03/04/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's amendment and remarks filed on 03/04/2008 are acknowledged.

Claims 2 and 19 have been canceled.

Claim 22 has been added.

Claims 1, 3 – 18 and 20 – 22 are pending.

Claims 3 and 10 – 16 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected Inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in the reply filed on 04/09/2007.

Claims 1, 4 – 9 and 17 – 22 are presently under consideration.

2. The objections and rejections of record have been withdrawn in view of Applicant's amendment and arguments.

It is noted that New Grounds of Rejection are set forth herein.

3. The following is noted of record regarding the interpretation of claim 8:

The sequences listed as SEQ ID NOS: 16, 17 and 19 – 22 are 3 – 7 amino acids in length, and thus the recitation of "at least 90% identical" language as it applies to these sequences is interpreted to require 100% identity, since percent identity can be applied only to a whole number of amino acids in a sequence.

4. The following is a quotation of the **second paragraph of 35 U.S.C. 112**.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 21 is rejected under **35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 is indefinite as being dependent on a canceled claim. Therefore, one of ordinary skill in the art would not be reasonably apprised of the metes and bounds of the claimed invention.

Applicant is reminded that any amendment must point to a basis in the specification so as not to add new matter. See MPEP 714.02 and 2163.06.

6. The following is a quotation of the appropriate paragraphs of **35 U.S.C. 102** that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 4 – 9 and 17 – 22 are rejected under **35 U.S.C. 102(e)** as being anticipated by Yoshinaga et al. (US Patent No. 7,482,325; see entire document).

Yoshinaga et al. teach and claim a method of inhibiting T cell proliferation in a patient by administering to the patient a soluble fusion protein comprising B7RP-2 (see entire document, in particular e.g. claims 1 – 8), wherein the patient has an autoimmune disease (e.g. claim 2). One of skill in the art is aware that B7RP-2 is an art-recognized synonym of B7-H3. Furthermore, the B7RP-2 polypeptide of SEQ ID NO:2 taught by Yoshinaga et al. is identical in sequence to the instant SEQ ID NO:7, as evidenced by the sequence search records of the instant application.

Yoshinaga et al. exemplify autoimmune diseases to be treated by their method as systemic lupus erythematosus, rheumatoid arthritis, osteoarthritis, immune thrombocytopenic purpura (ITP), and psoriasis (e.g. paragraph 291), and further teach that the method may be used for immunosuppression in bone marrow and organ transplantation (e.g. paragraph 292).

Therefore, the teachings of the reference anticipate the instant claimed invention.

8. Conclusion: no claim is allowed.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ILIA OUSPENSKI whose telephone number is (571)272-2920. The examiner can normally be reached on Monday-Friday 9 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram R. Shukla can be reached on 571-272-0735. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ILIA OUSPENSKI/

ILIA OUSPENSKI, Ph.D.

Primary Examiner

Art Unit 1644

June 30, 2009